

230645

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ENTERED
Office of Proceedings
JUL 19 2011
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Public Record

BY E-FILING

July 19, 2011

Ms. Cynthia F. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

**RE: Finance Docket No. 35498, Adrian & Blissfield
Rail Road Company – Continuance- in-Control--Charlotte
Southern Railroad Company, Detroit Connecting Railroad
Company, and Lapeer Industrial Railroad Company**

Dear Ms. Brown:

On behalf of the Adrian & Blissfield Rail Road Company ("ADBF"), I am e-filing ADBF's Reply to the Comments of Scott C. Cole submitted in this proceeding on July 11, 2011.

Sincerely yours,



John D. Heffner

Enclosure

Cc: All parties of record

ADBF-3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET FD 35498

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
-- CONTINUANCE-IN-CONTROL--
CHARLOTTE SOUTHERN RAILROAD COMPANY,
DETROIT CONNECTING RAILROAD COMPANY, AND
LAPEER INDUSTRIAL RAILROAD COMPANY**

**APPLICATION FOR AUTHORITY
UNDER 49 U.S.C. 11323 *Et Al***

**REPLY TO COMMENTS
OF SCOTT C. COLE**

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

DATED: July 19, 2011

ADBF-3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET FD 35498

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
-- CONTINUANCE-IN-CONTROL--
CHARLOTTE SOUTHERN RAILROAD COMPANY,
DETROIT CONNECTING RAILROAD COMPANY, AND
LAPEER INDUSTRIAL RAILROAD COMPANY**

**APPLICATION FOR AUTHORITY
UNDER 49 U.S.C. 11323 *Et Al***

**REPLY TO COMMENTS
OF SCOTT C. COLE**

**I.
INTRODUCTION**

Applicant Adrian & Blissfield Rail Road Company ("ADBF") files this reply to the late-filed comments submitted in the above-captioned proceeding by protestant and commenter Scott C. Cole ("Mr. Cole"). ADBF requests that the Board strike Mr. Cole's comments both as late-filed and for lack of the required verification. Should the Board accept Mr. Cole's comments, ADBF requests that the Board allow its reply in the interest of a complete record. ADBF respectfully requests that the Board promptly grant its application to continue in control of

three small short line railroads, Charlotte Southern Railroad Company ("CHS"), Detroit Connecting Railroad Company ("DCON"), and Lapeer Industrial Railroad Company ("LIRR"), inasmuch as Mr. Cole has not alleged, let alone shown, that the transaction will result in adverse competitive impacts that are both "likely" and "substantial."

II. STATEMENT OF FACTS

This proceeding involves an application filed by ADBF at the request of the Board on April 18, 2011, pursuant to 49 U.S.C. 11323(a) (3) and 49 CFR 1180.4(c), to cure its inadvertent but unauthorized acquisition of control of these three small railroads. On May 18, 2011, the Board served an order accepting ADBF's application for processing, finding the transaction a "minor one," and setting deadlines for the submission of public comments, ADBF's response to those comments, and issuance of a final decision on the merits. Three parties filed notices of intent to participate in these proceedings: Dale R. Pape, a shareholder and former employee of ADBF, Scott C. Cole, a self-described "citizen of the State of Michigan," and Gabriel Hall, merely identified as "an individual."¹ However, only Mr. Pape saw fit to file timely comments. Significantly, no rail shipper, competing railroad or motor carrier, or public agency has filed any comments in

¹ Mr. Hall is a former shareholder, director, and corporate officer of ADBF and now owns and manages U S Rail Corp., another short line rail carrier. Undisclosed is the fact that Mr. Pape is now a high level manager at U S Rail Corp.

opposition. Then on July 11, 2011, Mr. Cole late-filed comments asserting that because applicant's attorney had neglected to submit a certificate of service "listing myself [Cole] or any of the other POR in this case," he assumed that "the ADBF was no longer pursuing its application." Mr. Cole further claimed that he had not received a copy of ADBF's filings as directed by the Board and that he was relying on what he claimed was "the poor" quality of the pdf version of ADBF's application for preparing his responsive comments. He then asserted in the next paragraph that he did not become aware that ADBF was pursuing its application until he received a copy of ADBF's response to the comments filed by Dale Pape. He claims that the Board staff advised him to reduce his comments to writing and to submit them. Cole Reply at 1.

III. PRELIMINARY MATTERS

Mr. Cole's comments should be stricken as late-filed. The Board's decision served May 18, 2011, specified that public comments be submitted on June 17, 2011. Inadvertently, the undersigned counsel neglected to serve the original application on the three parties filing a notice of intent acknowledging receipt of the application. Nevertheless, Mr. Pape managed to file his comments on time and Mr. Cole could have done so as well. Mr. Cole even notes that he was able to review what he called "the poor quality of the pdf version of the application filed by them," presumably on the Board's website. Cole comments at 1. And Mr. Cole

was sufficiently familiar with the contents of the Board's May 18 decision that he knew to file a timely notice of intent on June 2 to participate in these proceedings and to send a copy to ADBF's counsel. His assertion that "he did not want to misstate any facts due to the poor quality of the PDF version filed by them" is nonsense. ADBF did not e-file its application. Rather it submitted a paper copy as is the normal procedure for filings accompanied by a filing fee. The undersigned counsel has reviewed the application shown on the Board's website and found it totally legible. ADBF attaches as Exhibit A several pages taken from the on-line version of its filing including one page from Mr. Dobronski's affidavit. Had Mr. Cole contacted this office, the undersigned counsel would have been happy to provide him with a copy of the application by overnight mail at no expense to him. But he failed to ask.

Moreover, Mr. Cole's filing must be stricken for failure to abide by the Board's requirement that filings by persons not attorneys or Board-approved practitioners be verified. Under the Board's Rules of Practice at 49 CFR 1104.4(b), the original of each document not signed by a practitioner or an attorney must be (1) signed in ink; (2) accompanied by the signer's address, and (3) be verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed. Like Mr. Pape's comments, those of Mr. Cole contain serious allegations as to how Mr. Dobronski has managed ADBF during the eight years he

has served as ADBF's president. The severity of these allegations requires that Mr. Cole's comments be verified. Accordingly, ADBF requests that they be rejected as deficient. 49 CFR 1104.10(a).

Finally, Mr. Cole's comments should also be rejected for lack of standing. In his notice of intent, Mr. Cole merely identifies himself as a "citizen of the State of Michigan." Notice of Intent, submitted as Exhibit B. He is not a rail shipper or a shipper representative, a public agency or public agency representative, a citizen living along ADBF's right of way, or an employee of ADBF or its affiliated railroads. By his own admission, he works in some unspecified manner for the railroad industry at an unspecified location.² Cole comments at 2. Inasmuch as he does not appear to be affected by this proceeding, ADBF submits that he has no standing to appear and participate in these proceedings.

ARGUMENT

Mr. Cole's assertions do not provide any basis for relief and his request that the Board deny ADBF's application should be rejected.

Transactions involving the approval of the common control of short line railroads are governed by the provisions of section 11324(d) of the I.C.C. Termination Act. The *sole* approval criteria are whether, (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a

² He has been employed by the Penn Central Railroad, Consolidated Rail Corporation, and the Norfolk Southern Railroad, respectively.

monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. Stated otherwise, the Board *must* approve a control application that does not involve more than one class I railroad such as that presented here absent any unresolvable competitive impacts.³

Like Mr. Pape's arguments, Mr. Cole's comments do not address any competitive issues. Rather his assertions are limited to four topics: 1) allegations submitted in FD 35410 involving ADBF's control of its subsidiary Jackson & Lansing Railroad ("JAIL"); 2) certain statements made by Dale Pape in FD 35253 involving ADBF's class exemption to continue in control of CHS, DCON, and LIRR as well as the personal relationship between Mr. Pape and Mr. Dobronski ; 3) the transfer of control requirements under the Michigan Liquor Control laws; and 4) the circumstances under which Mr. Dobronski left his position as a justice of the peace in Maricopa County in the State of Arizona.

³ See, Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company--Control--Gateway Western Railway Company and Gateway Eastern Railway Company, FD 33311 (STB served May 1, 1997), slip op. at 4; CSX Corporation and CSX Transportation, Inc.--Control--The Indiana Rail Road Company, STB FD 32892 (STB served Nov. 7, 1996), slip op. at 3-4; Illinois Central Corporation and Illinois Central Railroad Company--Control--CCP Holdings, Inc., Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company, STB FD 32858 (STB served May 14, 1996), slip op. at 3, cited in Canadian National, et al.--Control--Wisconsin Central Transp. Corp., et al., 5 S.T.B. 890, at 899-900 (2001).

As with Mr. Pape's allegations, Mr. Cole's assertions have nothing to do with whether ADBF should be allowed to continue in control of three very small class III short line railroads operating in the State of Michigan. To the extent that Mr. Cole's allegations have anything to do with railroading, they either involve safety matters within the exclusive jurisdiction of the Federal Railroad Administration or commercial matters subject to the jurisdiction of the appropriate state courts. As to Michigan state liquor control requirements, Mr. Cole misreads subsection (1) of section 529 of the liquor control laws which requires that the transfer of more than a 10% interest in an ownership interest in an entity holding a liquor license be approved by the State. ADBF had to comply with this requirement *in addition to* [emphasis supplied] the streamlined process of subsection 2 of section 529 because more than 10% of its stock changed hands. Finally, regarding Mr. Dobronski's status as a Justice of the Peace, Mr. Cole attached the charges submitted by the prosecutor rather than the decision on the merits. A State Court absolved almost all of those charges for lack of evidence and he retired shortly after that proceeding. *See, Exhibit D.*

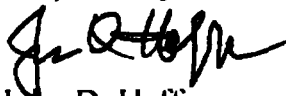
As ADBF said in response to Mr. Pape's allegations, the moral character or "fitness" of an individual to own and operate a railroad has never been the subject of STB (or ICC) regulation or jurisdiction. Matters involving management styles and qualifications are outside the Board's jurisdiction as are issues of corporate

governance. To the extent that these are legal matters at all, they are matters of state law. The Board and the ICC have long held that commercial disputes are outside the agency's expertise and jurisdiction. *Cf., Canadian Pacific Limited, Et Al-Purchase And Trackage Rights-Delaware & Hudson Railway Company*, 7 I.C.C.2d 95, 1990 ICC Lexis 321 at 48, note 25 (ICC 1990)("It would be inappropriate for this agency to interpose itself among the parties in what is essentially a private contractual dispute"). To the extent that Mr. Cole's comments concern matters raised in FD 35410 involving ADBF's control of JAIL, those matters do not belong in this case.

V. CONCLUSION

The sole protestant and commenter Scott C. Cole has submitted nothing on the critical issue of whether the continuance-in-control by ADBF of three small class III short line railroads in Michigan would in some way adversely affect competition. Accordingly, the statute requires the Board to issue a decision approving ADBF's inadvertent but previously unauthorized control of these carriers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", written over the printed name.

John D. Heffner

John D. Heffner, P.L.L.C.

1750 K Street, N.W.

~ Suite 200

Washington, D.C. 20006

(202) 296-3333

Counsel for Petitioner

Dated: July 19, 2011

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I mailed a copy of the "Reply to comments of Scott C. Cole" of the Adrian & Blissfield Rail Road Company to the following parties on the 19th day of July, 2011, by first class U.S. Mail:

Scott C. Cole
2700 Noon Road
Jackson, MI 42901

Gabriel D. Hall
7846 West Central Avenue
Toledo, OH 43617

Dale R. Pape
1988 West Gier Road
Adrian, MI 49221

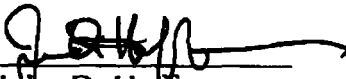

John D. Heffner

EXHIBIT A

LAW OFFICES
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ORIGINAL

APR 18 2011
PUBLIC RECORD

April 18, 2011

APR 18 2011

RECEIVED

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

FILED
APR 18 2011
SURFACE
TRANSPORTATION BOARD

229308

RE: Finance Docket No. 35498, Adrian & Blissfield
Rail Road Company – Continuance- in-Control–Charlotte
Southern Railroad Company, Detroit Connecting Railroad
Company, and Lapeer Industrial Railroad Company

FILED RECEIVED
APR 18 2011
SURFACE
TRANSPORTATION BOARD

Dear Ms. Brown:

I am filing on behalf of the Adrian & Blissfield Rail Road Company ("ADB"), a class III short line rail carrier, its application under 49 U.S.C. 11323-4 for the continuance in control of three other class III short line rail carriers, Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, and Lapeer Industrial Railroad Company. This application is submitted in accordance with the Board's ruling on March 4, 2011, in Arthur W. Single II, Dale R. Pape, Dawn W. Osment, L. Howard Smith, Ferrovia-LLC, and Adrian & Blissfield Rail Road Company -- Continuance in Control Exemption -- Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, Lapeer Industrial Railroad Company, and Jackson & Lansing Railroad Company, FD 35253, that this continuance in control request be resubmitted as either a formal application or an individual petition for exemption.

I am also submitting a Word copy of the application on a diskette as well as a check for \$7500 to cover the filing fee. Please date stamp and return one copy of the application.

ADBF-1

29308

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET FD 35498

ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
-- CONTINUANCE-IN-CONTROL--
CHARLOTTE SOUTHERN RAILROAD COMPANY,
DETROIT CONNECTING RAILROAD COMPANY, AND
LAPEER INDUSTRIAL RAILROAD COMPANY

APPLICATION FOR AUTHORITY
UNDER 49 U.S.C. 11323 Et Al

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Counsel for Petitioner

FEE RECEIVED
APR 18 2011
SURFACE
TRANSPORTATION BOARD

Dated: April 18, 2011

FILED
APR 18 2011
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET FD 35498

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
-- CONTINUANCE-IN-CONTROL--
CHARLOTTE SOUTHERN RAILROAD COMPANY,
DETROIT CONNECTING RAILROAD COMPANY, AND
LAPEER INDUSTRIAL RAILROAD COMPANY**

**APPLICATION FOR AUTHORITY
UNDER 49 U.S.C. 11323 *ET AL***

**I.
INTRODUCTION**

Pursuant to 49 U.S.C. 11323(a) (3) and 49 CFR 1180.4(c), Adrian & Blissfield Rail Road Company ("ADBF") seeks Board authority to continue in control of Charlotte Southern Railroad Company ("CHS"), Detroit Connecting Railroad Company ("DCON"), and Lapeer Industrial Railroad Company ("LIRR").¹ Applicant seeks this authority pursuant to an order issued by the Surface Transportation Board ("the Board") on March 4, 2011, in FD 35253, rejecting its Verified Notice of Exemption ("the NOE") filed on February 15, 2011, on the grounds that the request was not appropriate for consideration under

¹ Applicant does not seek authority to continue in control of Jackson & Lansing Railroad Company ("JAIL") here as the matter is pending in Adrian & Blissfield Rail Road—Continuance in Control Exemption—Jackson & Lansing Railroad, FD 35410 (hereafter "The Jackson & Lansing Control proceeding").

VERIFIED STATEMENT OF MARK W. DOBRONSKI

State of Michigan)
) ss:
County of Wayne)

My name is Mark Dobronski, and I am the President of the Adrian & Blissfield Rail Road Company (ADBF) and its several subsidiaries, which include Charlotte Southern Railroad Company (CHS), Detroit Connecting Railroad Company (DCON), Lapeer Industrial Railroad Company (LIRR), and Jackson & Lansing Railroad Company (JAL).¹ My business address is 38235 N Executive Drive, Westland, MI 48185-1971. I am submitting this verified statement in support of and as an explanation of matters addressed in the attached application for common control approval by ADBF or each of its short line railroad subsidiaries.

I want to begin my statement by telling the Board a little about the history and business of the ADBF, then how I came to be involved with the company, followed by an explanation (but not an excuse) for ADBF's carelessness in seeking common control approval, and finally a little about the difficulties in dealing with a dissident shareholder, Dale R. Pape.

ADBF was founded in February 1991 as a class III short line railroad to lease and operate an approximately 20 miles of railroad line owned by the State of Michigan in Lenawee County, Michigan. Operating primarily between the namesake cities of Adrian and Blissfield, ADBF assumed operations formerly served by the Lenawee County Railway. Three of its original shareholders were Dale R. Pape,² Arthur W. Single, and Irwin Howard Smith, each holding a 25 percent equity position in the company. The fourth (25%) shareholder would periodically change over time. Neither Ferrovia LLC, the company that my family controls, nor I were involved in

ADBF is also the parent company of Tecumseh Branch Connecting Railroad Company (TCBY), which is no longer an operating railroad company.

Shareholder Dawn Osment was formerly married to Dale Pape and eventually acquired on half of his shares.

EXHIBIT B

229671

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35498

NOTICE OF INTENT TO PARTICIPATE


**ENTERED
Office of Proceedings**

JUN 02 2011

**Part of
Public Record**

I Scott C. Cole respectfully submit my Notice of Intent to Participate in this proceeding to the Board. I am a citizen of the State of Michigan. As a result I have a strong interest in this proceeding.

Respectfully Submitted,



Scott C. Cole

2700 Noon Rd.

Jackson, MI. 49201

CERTIFICATE OF SERVICE

This is to certify that a copy of Scott C. Cole Notice of Intent to Participate has been served this 2nd day of June, 2011 via first-class mail upon the following.

Secretary of Transportation

1200 New Jersey Avenue, S. E.

Washington, DC 20590

Attorney General of the United States

C/O the Assistant Attorney General Anti -Trust Division

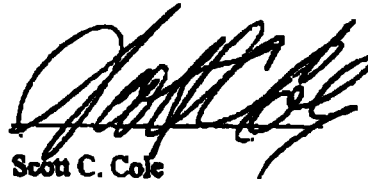
Room 3109, Department of Justice

Washington, DC 20530

John D. Heffner PLLC

1750 K Street, N.W. Suite 200

Washington DC. 20006



Scott C. Cole

EXHIBIT C

Sec. 529.

*

- (1) A license or an interest in a license shall not be transferred from 1 person to another without the prior approval of the commission. For purposes of this section, the transfer in the aggregate to another person during any single licensing year of more than 10% of the outstanding stock of a licensed corporation or more than 10% of the total interest in a licensed limited partnership shall be considered to be a transfer requiring the prior approval of the commission.
- (2) Not later than July 1 of each year, each privately held licensed corporation and each licensed limited partnership shall notify the commission as to whether any of the shares of stock in the corporation, or interest in the limited partnership, have been transferred during the preceding licensing year. The commission may investigate the transfer of any number of shares of stock in a licensed corporation, or any amount of interest in a licensed limited partnership, for the purpose of ensuring compliance with this act and the rules promulgated under this act.
- (3) Except as otherwise provided in subdivisions (a) through (f), upon approval by the commission of a transfer subject to subsection (1), there shall be paid to the commission a transfer fee equal to the fee provided in this act for the class of license being transferred. A transfer fee shall not be prorated for a portion of the effective period of the license. If a person holding more than 1 license or more than 1 interest in a license at more than 1 location, but in the name of a single legal entity, transfers all of the licenses or interests in licenses simultaneously to another single legal entity, the transfers shall be considered 1 transfer for purposes of determining a transfer fee, payable in an amount equal to the highest license fee provided in this act for any of the licenses, or interests in licenses, being transferred. A transfer fee shall not be required in regard to any of the following:
- (a) The transfer, in the aggregate, of less than 50% of the outstanding shares of stock in a licensed corporation or less than 50% of the total interest in a licensed limited partnership during any licensing year.
 - (b) The exchange of the assets of a licensed sole proprietorship, licensed general partnership, or licensed limited partnership for all outstanding shares of stock in a corporation in which either the sole proprietor, all members of the general partnership, or all members of the limited partnership are the only stockholders of that corporation. An exchange under this subdivision shall not be considered an application for a license for the purposes of section 501.
 - (c) The transfer of the interest in a licensed business of a deceased licensee, a deceased stockholder, or a deceased member of a general or limited partnership to the deceased person's spouse or children.
 - (d) The removal of a member of a firm, a stockholder, a member of a general partnership or limited partnership, or association of licensees from a license.
 - (e) The addition to a license of the spouse, son, daughter, or parent of any of the following:
 - (i) A licensed sole proprietor.
 - (ii) A stockholder in a licensed corporation.
 - (iii) A member of a licensed general partnership, licensed limited partnership, or other licensed association.
 - (f) The occurrence of any of the following events:
 - (i) A corporate stock split of a licensed corporation.
 - (ii) The issuance to a stockholder of a licensed corporation of previously unissued stock as compensation for services performed.
 - (iii) The redemption by a licensed corporation of its own stock.
- (4) A nonrefundable inspection fee of \$70.00 shall be paid to the commission by an applicant or licensee at the time of filing any of the following:
- (a) An application for a new license or permit.
 - (b) A request for approval of a transfer of ownership or location of a license.

EXHIBIT D

FILED

SEP 07 2001

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT
BEFORE THE HEARING PANEL**

**ARIZONA COMMISSION ON
JUDICIAL CONDUCT**

Inquiry concerning Judge)	
)	Case No. 01-046, et al.
MARK W. DOBRONSKI)	
Scottsdale Justice Court)	REPORT TO THE ARIZONA COMMISSION
Maricopa County)	ON JUDICIAL CONDUCT OF THE PROPOSED
State of Arizona,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND RECOMMENDATIONS
Respondent)	

Upon the proper service of the Commission's notice of statement of formal charges the Respondent filed responses; thereafter, a formal hearing was held by the duly authorized three-member Hearing Panel that convened, took testimony, and reviewed exhibits beginning on June 18, 2001 at 8:30 a.m. in Superior Court Room 812 of the Maricopa County Superior Court. Said hearing continued with appropriate recesses for five days through the June 22, 2001 2001 at approximately 5:45 p.m.. Thirty-six witnesses testified including the Respondent. There were more than 80 exhibits, many of them multiple page exhibits, including a 400 page transcript of the July 27, 2000 forcible entry and detainer proceedings plus 6 cassette tapes of those proceedings and a 97 page transcript of the August 15, 2000 bond proceedings concerning the forcible entry and detainer cases. The transcript of the Commission hearing is in five volumes and totals 1256 pages.

At the conclusion of the testimony the hearing was recessed in order for the counsel for the Commission and for the Respondent to file simultaneous closing arguments, proposed

Findings of Fact, Conclusions of Law and Recommendations with the Commission by 5:00 p.m. on July 27, 2001. Upon stipulation of counsel of July 13, 2001 and good cause appearing, the deadline for filing was extended to August 2, 2001 by order of the presiding member. Those documents were appropriately filed, and the Hearing Panel deemed the case submitted as of August 2, 2001.


Pursuant to Rule 10(b) of the Rules of the Commission, the Hearing Panel on August 8, 2001 requested from the Commission an extension to file its report. The Commission, on August 9, 2001 authorized an extension to file said report to September 7, 2001.

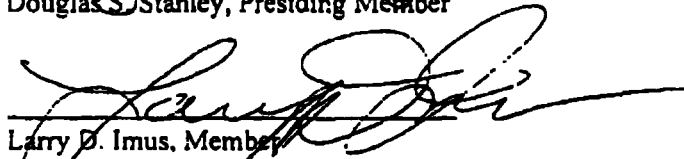
The Hearing Panel makes the following report to the Commission of proposed Findings of Fact and Conclusions of Law and Recommendations as to the formal charges numbered 5 through 41, with the exclusion of Charge 34 which disciplinary counsel requested to be remanded to the Commission for informal resolution, and was so remanded by the Presiding Panel Member's order of June 15, 2001. Additionally, counsel for the Commission has requested dismissal of charges 23, 25, 39, and 40.

Additionally, besides making an individual recommendation as to each charge the Hearing Panel has made an Overall Recommendation as to the cumulative relationship of all the Findings of Fact, Conclusions of Law and Recommendations as to all of the charges (see tab entitled "Overall Recommendation" after Tab 41).

All references to the transcript of the Commission hearing are designated by "TR" with the page[s] number[s] listed thereafter and line numbers where appropriate.

Respectfully submitted to the Commission on Judicial Conduct by the hearing panel this
7th day of September, 2001.


Douglas S. Stanley, Presiding Member


Larry D. Imus, Member


Harold Watkins, Member

testified that the 90% of the cases were settling at the time of the pretrial conference/mediation. (TR1046)

Judge Dobronski was elected by his peers as associate presiding justice of the peace for Maricopa County. (TR1059) He testified that he felt his role was to control his courtroom, his calendar and to see that justice was served as best as possible. (TR1077)

He testified that his court received the 2000 Superior Court Justice Achievement award by Presiding Judge Robert Myers for the mediation program and the access to swift and fair justice that the Scottsdale Justice Court was providing to the citizens. (TR1094 - 1095)

He gave the following answers to the following questions at TR1180, lines 7 - 25:

- Q. Did you have any security in the courtroom at the time?
- A. I don't have security in my courtroom at all. If I have a clerk in the courtroom, except on arraignment day, it is a volunteer bailiff because the County doesn't have money. I do have a panic button. And the court security that takes care of the City Court, if I push the panic button, will come in. It eventually brings the police too. But that's what I have for security.
- Q. You have no bailiff. You have no security or any other visible person who is supposed to take care of order in the - - and decorum in the court while you are running the business of the court?
- A. 95 percent of the time. And the other 5 percent of the time being arraignment day, I'm the only one in the courtroom besides the parties unless I have a volunteer in there. Mickey Dingott, Libby Dwyer, somebody along that line who is sitting in the courtroom. We don't have the staff in Scottsdale. That is how shorthanded we are.

RECOMMENDATION:

The Panel would note that the four charges (23, 25, 39, 40) that disciplinary counsel requested to be dismissed encompassed some of the most serious allegations against Respondent. The Panel, being cognizant of the potentially irreparable reputational harm that may occur through the publication of charges alone, feels it is incumbent to convey to the Commission the Panel's feelings that these charges were not only not proven by clear and convincing evidence, but that there was no credible evidence to support those charges presented at the hearing.

The Panel has recommended the dismissal of the following fifteen charges as there was no clear and convincing evidence of any judicial misconduct by Respondent:

Charges 11 - 14; 18 - 21; 24; 29 - 30; 33; 35 - 36; 38

The Panel has recommended the dismissal of charge 17 as duplicitous of the conduct alleged in charge 15. It should also be remembered that Charge 34 was remanded to the Commission by request of disciplinary counsel, and was so remanded by the June 15, 2001 order of the Presiding Panel Member.

As to the charges where the Panel found misconduct (16) eight of those recommendations were for an advisory letter (Charges 6 - 7; 9 - 10; 15; 28; 37; 41), seven for censure (Charges 8, 16, 22, 26, 27, 31, 32), and one for suspension (Charge 5).

The testimony before the Panel was that Judge Dobronski's court and Judge Dobronski, since he took office in January 1999, handled an extremely high number of cases, that numbered yearly in the thousands. In considering the entirety of the charges, the Panel has been satisfied by clear and convincing evidence that the Respondent has committed judicial misconduct as to 16 of the charges that are above listed. In a majority of those cases the judicial misconduct proven against Respondent were issues involving "temperment" and "demeanor". Respondent oftentimes overreacted in dismissing charges with prejudice, denying persons the right to be heard according to law, dangling handcuffs in front of defendants, threatening persons, including attorneys, with contempt, and making quick decisions which would appear to have been done in order to clear the court's calendar and/or to move cases along quickly. Respondent elevated the control of the court and calendar over the substantive issues and rights of the individual defendants. Respondent in some of these cases did not act fairly and did not act in a manner that promoted public confidence in the integrity and impartiality of the judiciary, and failed to perform his duties without at least the appearance of some bias or prejudice in certain cases, all to the disrepute of his judicial office. These cases were the few. Some would and will argue, "Are there more complainants that have not come forward?" The Panel cannot speculate even if it wanted to.

Throughout the proceedings Respondent defended on the premise that he did not admit or agree that in any way he committed any judicial misconduct. Respondent failed to acknowledge or appreciate or take responsibility for any of the alleged misconduct. This lack of candor or admission of any misconduct indicates a stubborn and/or arrogant attitude. But yet at the same time he did in some of his testimony, and in his closing answers as to questions of the Panel, and in some of his pleadings, exhibit a contrite heart. He admitted he had some problems in his manners and demeanor. He further stated he could and would be a better judge for going through this process. The testimony on his behalf in mitigation, a portion set forth above, testifies to his positive attributes individually and as a judge.

The Panel cannot say unequivocally or adamantly that Respondent's misconduct in these limited number of cases was a pattern that may exist in the thousands of cases that he has otherwise handled. The Panel has literally agonized over this case. Only those that have sat on such cases where a person's future lies in the balance would understand such responsibility.

Reasonable minds may differ. The Panel avows that it had individual differences, but those were ultimately reconciled in unanimity as to the individual charges. As to the cumulative effect of these charges, the task was much greater. The individual members, with reasonable

minds. again differed and vacillated on the Overall Recommendation; however, again the panel reached unanimity.

The Panel hereby recommends the Respondent not only suffer the individual recommendations as to each charge, but Respondent be suspended without pay for 120 days.